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OFFICE OF PETITIONS

WOODCOCK WASHBURN LLP
CIRA CENTRE 12TH FLOOR
2929 ARCH STREET
PHILADELPHIA PA 19104-2891

In re Application of :
Oesterreicher, et al. :
Application No. 10/609,433 : ON PETITION
Filed: June 27, 2003 :
Attorney Docket No. IVBU-0126 :
:

This is a decision on the petition to withdraw the holding of abandonment under 37 CFR 1.181, filed July 22, 2008.

The petition under 37 CFR 1.181 is **GRANTED**.

The application was held abandoned due to failure to timely file a reply to the Notice of Allowance, mailed January 31, 2008. This Notice set a statutory period of three months for issue fee transmittal. No issue fee having been received, the application became abandoned on May 1, 2008. The Office mailed a Notice of Abandonment on May 27, 2008.

To establish nonreceipt of an Office action, a petitioner must: 1) include a statement that the Office action was not received; 2) attest to the fact that a search of the file jacket and docket records indicates that the Office action was not received; and 3) include a copy of the docket record where the nonreceived Office action would have been entered had it been received and

docketed.¹ A proper docket report consists of a "docket record where the nonreceived Office action would have been entered had it been received and docketed."² "For example, if a three month period for reply was set in the nonreceived Office action, a copy of the docket record showing **all** replies docketed for a date three months from the mail date of the nonreceived Office action must be submitted..."³

With the instant petition, petitioner has submitted a copy of a proper master docket report, showing all of his replies docketed for the due date of April 30, 2008. An entry for the instant application is absent, supporting the conclusion that the Notice of Allowance was not received. In addition, petitioner has stated that the Notice was not received, and attested to the fact that he searched the file jacket and docket records.

The matter is being forwarded to Group Art Unit 2186 for re-mailing of the Notice of Allowance, setting a new period for reply.

Telephone inquiries related to this decision should be directed to the undersigned at (571)272-3207.

Cliff Congo

Cliff Congo
Petitions Attorney
Office of Petitions

¹ See MPEP 711.03(c)(II).

² MPEP 711.03(c)(II) (emphasis added).

³ Id.